

REMARKS

This Amendment is responsive to the Office Action mailed July 19, 2006 and the Advisory Action mailed October 10, 2006. This Amendment accompanies a Request for Continued Examination (RCE) and constitutes the required submission. In this Amendment, Applicant has amended claims 1, 12, 20, 26, 33, 34, 35 and 37. Claims 1-37 are pending.

Amendments

Applicant has amended claims 1, 12, 20, 26, 33, 34, 35 and 37 to specify that the audio includes speech. Applicant respectfully requests reconsideration in view of the amendments and the following remarks.

Claim Rejection Under 35 U.S.C. § 103

In the Final Office Action, the Examiner rejected claims 1-34 under 35 U.S.C. § 103(a) as being unpatentable over Lynk (EP 0321672) in view of Burns (U.S. Pat. App. No. 2002/0071545) and further in view of MPEP 2144.03 and rejected claims 35-37 under 35 U.S.C. § 103(a) as being unpatentable over Lynk (EP 0321672) in view of MPEP 2144.03. Applicant respectfully traverses the rejections. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

Claims 1, 12, 20, 26, 33 and 34

For purposes of brevity, Applicant will discuss the rejection as it applies to claim 1. Substantially the same arguments apply to independent claims 12, 20, 26, 33 and 34. With reference to independent claim 1, the applied references lack any teaching that would have suggested a method comprising transmitting a request for access to a broadcast link in a point-to-multipoint communication system, transmitting audio with the access request, wherein the audio includes speech, and terminating the audio transmission in the event the access request is denied.

The Examiner characterized Lynk as describing transmitting and receiving a request for access to a broadcast link in a point-to-multipoint communication system. The Examiner recognized, however, that Lynk fails to teach either transmitting or receiving audio with the

access request or terminating the audio transmission in the event the access request is denied, as required by Applicant's claims.

To satisfy the shortcomings of Lynk, the Examiner cited Burns as describing transmitting audio with an access request and took Official Notice that it is well known in the art to terminate an audio transmission in the event an access request is denied. Applicant respectfully submits that the Examiner has misinterpreted either the references or the requirements of Applicant's claims.

1. Transmission or Reception of Audio including Speech with Access Request

In support of the rejection, the Examiner characterized Burns as describing transmitting audio with the access request. The Examiner referenced paragraph 54 of Burns, characterizing the paragraph as describing transmitting audio tones that act as access requests. The audio tones generated by the Burns device clearly do not accompany access requests, nor act as access requests. In addition, the audio tones do not include speech. Instead, as previously noted by Applicant, the audio tones described by Burns are merely DTMF tones. Consequently, the Burns disclosure is irrelevant to the Lynk reference, and provides no teaching that would have suggested modification of the Lynk system to arrive at the claimed invention. Moreover, Burns and Lynk reside in different fields of endeavor, and Burns provides no teaching reasonably pertinent to problems addressed by Lynk.

Burns is directed to Internet browsing, and makes no mention of point-to-multipoint audio communication, much less speech communication. Specifically, Burns describes using a uniform user interface (such as a numeric touchpad) on computing devices having differing hardware and software configurations. Each button provides access to a specific class of Internet content (e.g., websites, email, etc.), thus allowing the user to associate particular classes of Internet content with specific keys on a touchpad in any variety of hardware or software configurations. Again, Burns provides no teaching even remotely relevant to a point-to-multipoint audio communication system, much less pertinent to the generation of requests for access to a broadcast link in such a system.

Paragraph 54 of Burns describes processing of the selection of a key on a touchpad. When the requesting device is a telephone (e.g., device 210), depressing the key results in an audio tone (DTMF tone) which is converted to an HTML request for a particular class of

information associated with the key. The Examiner apparently equated the converted audio tones with audio information sent with (or acting as) a request for access to a broadcast link. However, the audio tones described by Burns act as a request for information, e.g., in the form of a web page, and serve no purpose related to access to a broadcast link. Moreover, DTMF tones clearly do not include speech. This difference further underscores the inapplicability of Burns to the Lynk system as well as to the claimed invention.

The Burns device requests information, not access to a communication link. Indeed, Burns does not even concern a communication channel for which access is limited. Instead, the Burns device requests specific information over a communication link to which the Burns device already has access. In fact, access to the communication link is not a concern in the Burns reference. Therefore, the concept of an access request, particularly in relation to the DTMF tones described by Burns, is not even applicable to Burns. Accordingly, because Burns fails to teach or suggest transmitting a request for access to a broadcast link, it likewise would not have suggested transmitting audio with (or that acts as) an access request, as required by Applicant's claims.

In the Advisory Action, with respect to Applicant's argument that the transmission or reception of audio with an access request is not taught by Burns, the Examiner stated that "the Stevens reference teaches where the contents of the call that has requested access to the system, can be stored at an intermediate point." The intended meaning of the Examiner's statement is unclear. In addressing the lack of any access request with audio in Burns, Applicant questioned how or why one of ordinary skill in the art would have considered Burns with respect to modifications to the Lynk system. Any teachings in the Stevens reference seem irrelevant to this issue, especially in view of the fact that Stevens was not even applied by the Examiner in the final rejection. Rather, all rejections were made on the basis of Lynk and Burns.

If the Examiner seeks to enter yet another new grounds of rejection by way of the Advisory Action, then the Examiner should have reopened prosecution and made such a rejection non-final. Applicant has thoroughly distinguished the Stevens reference from the claimed invention in previous communications. Presumably on that basis, the Examiner previously withdrew the Stevens references and relied only on rejections based on Lynk and Burns in the final rejection. Any reliance on Stevens would be misplaced. Accordingly, the Examiner's reference to Stevens is confusing and requires clarification.

With further reference to Burns, the Examiner failed to identify any teaching in the prior art of a motivation to combine the teachings of the applied references. The Examiner did not explain why one of ordinary skill in the art would have even considered Burns relevant to point-to-multipoint communication. Burns is in a completely different field of endeavor, i.e., delivery of Internet content. Moreover, Burns does not address any problem reasonably pertinent to broadcast link access in a point-to-multipoint system. Generation of a request for information based on a DTMF tone associated with a key bears no relationship to generation of a request for access to a broadcast link in the point-to-multipoint system of Lynk. As described above, the Burns device fails to teach or suggest transmitting audio with (or that acts as) an access request, much less audio including speech, because access to the communication channel is not a concern to Burns. Thus, one of ordinary skill in the art would not even have looked to the system in Burns, which does not need to request access to a communication channel, to modify the access request of the Lynk system into an audio access request.

Furthermore, the audio tone in Burns is converted to HTML code before being sent to server 230. The request for information is therefore not audio, or even an audio tone, when it is transmitted and reaches the device that acts on the request (i.e., server 230). This is another basic difference that cannot be ignored. If the Burns system and the Lynk system were combined, the result would be an HTML code that is sent to an arbitration controller. An HTML code is not audio nor audio including speech. Nor would HTML code serve as an access request to a broadcast link in a point-to-multipoint communication system. Thus, Burns bears no relationship whatsoever to the Lynk system, and provides no pertinent teachings. Moreover, even if the Lynk system were somehow modified according to Burns, the result would not conform to the claimed invention. Rather, the resulting modification would make little if any sense in the Lynk system. In general, combining Burns and Lynk would be akin to attempting to fit a square peg in a round hole, but without even a discernible objective.

Compounding the glaring deficiencies in the Burns reference is the fact that neither Lynk nor Burns even appreciates the problems addressed by Applicant's claimed invention. In particular, one of ordinary skill in the art, in view of Burns and Lynk but without access to Applicant's disclosure, would have had no appreciation of the ability to reduce delay between transmission of an access request and transmission of the audio to be broadcast in a point-to-multipoint communication system. Burns make no mention of such a problem, much less a

solution conforming particularly to Applicant's claimed invention. Even if Lynk were modified in view of Burns, the amount of delay between transmission of the access request and transmission of the audio to be broadcast would be the same, because Burns does not transmit audio nor audio including speech, making any motivation to undertake such a modification highly suspect.

2. Termination of the Audio Transmission in the Event the Access Request is Denied

The Examiner also supported the rejection by taking Official Notice of "Lynk's admission where [it] is well known in the art of termination [of] the audio transmission in the event the access request is denied." The Examiner, however, failed to point to any such admission in Lynk and the Applicant is unable to find such an admission. The Examiner's Official Notice of the "admission" is mistaken, and thus Applicant traverses the Official Notice.

Lynk does not refer to terminating an audio transmission that has been transmitted with an access request in the event the access request is denied. Instead, Lynk describes the technique of storing voice data pending the outcome of a channel request. (Column 5, lines 24-29). Lynk requires the grant of the channel request before audio is transmitted. (Column 5, lines 35-38). This is a fundamental difference.

Clearly, the technique described in Lynk sends nothing at all if a communication path is not available, i.e., if an access request is denied. Therefore, it is incorrect to say that any audio transmission would be terminated by Lynk because, if an access request is not granted, there is simply no audio transmission. The Examiner recognized (and acknowledged) that Lynk fails to disclose sending audio with the access link. (Office Action, page 2). Logically, it is not possible to terminate an audio transmission that has never even commenced.

In fact, the approach described by Lynk represents virtually the opposite of that specified by Applicant's claims. In the Lynk system, the audio is stored until a communication channel is assigned rather than sent with an access request, and then terminated when an access request is denied.

The Examiner offered no documentary evidence in support of the assertion of Official Notice. Applicant respectfully submits that the Examiner's unsupported finding of Official Notice has no basis in the common knowledge of those skilled in the art. The fact at issue is not capable of instant and unquestionable demonstration as to not be in dispute. On the contrary,

Applicant specifically disputes the Examiner's finding of Official Notice, and asserts that it is incorrect. Therefore, Applicant requests that the Examiner provide documentary evidence in support of the Official Notice in the next Office Action, or withdraw any rejection that relies on such Official Notice.

In the Advisory Action, the Examiner stated, with respect to Applicant's argument that it is not possible to terminate an audio transmission that never even commenced, that "it is well known in the art where when access to communications is denied, the access request packets are discarded including any other data related to the access request." Applicant is confused by the Examiner's statement. First, the Examiner identified no prior art teaching to support this broad assertion. Moreover, it is unclear what "other data related to the access request" would be discarded. Clearly, there is no suggestion in the art of transmitting audio including speech with an access request, and terminating the audio transmission in the event the access request is denied.

For at least these reasons, the Examiner has failed to establish a prima facie case for non-patentability of Applicant's claims 1, 12, 20, 26, 33 and 34 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

Claims 2-11, 13-19, 21-25, and 27-32

Claims 2-11 are dependent on claim 1, claims 13-19 are dependent on claim 12, claims 21-25 are dependent on claim 20 and claims 27-32 are dependent on claim 26, and are therefore in condition for allowance for the reasons set forth above. Furthermore, the applied references fail to teach or suggest many of the features set forth in the dependent claims.

For example, Lynk and Burns also fail to disclose or suggest transmitting audio from a wireless communication device before receiving an acknowledgement that an access request is granted, as set forth in claims 3, 15, and 22. Claims 4, 16, and 23 require that the audio is transmitted without receiving an acknowledgement that the access request is granted.

Lynk stores voice data pending the outcome of an access request, and then retrieves the voice data from memory for transmission if the access request is granted. In particular, Lynk describes the buffering of voice data when a subscriber initiates a transmission by depressing a push-to-talk (PTT) button, followed by delayed transmission of the voice data only upon receipt of a grant.

Again, Lynk requires the grant of an access request before audio is transmitted and, in that case, the audio includes buffered audio. In the passage cited by the Examiner (Column 5, lines 41-44), Lynk specifically states that the “buffer will hold the recorded voice until grant of the channel; then it will reproduce the voice information.” This passage appears to be directly contrary to the requirements of claim 3, 15, and 22. Accordingly, it is unclear why the Examiner referred to this portion of Lynk in the Office Action.

Contrary to claims 4, 16, and 23, Lynk requires the grant of an access request before transmitting the buffered voice data. In another passage cited by the Examiner (Column 7, lines 5-8), Lynk refers to the reproduction of voice data from a buffer as further speech continues to fill the buffer. This passage appears to be wholly irrelevant to the requirements set forth in claims 4, 16, and 23. In particular, the filling of a local buffer with speech data per Lynk provides no teaching concerning the relationship between audio transmission and the grant of access request.

For at least these reasons, the Examiner has failed to establish a prima facie case for non-patentability of Applicant’s claims 2-11, 13-19, 21-25, and 27-32 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

Claims 35-37

The Examiner rejected claims 35-37 under 35 U.S.C. § 103(a) as being unpatentable over Lynk (EP 0321672) in view of MPEP 2144.03. Applicant respectfully traverses the rejection. The applied references fail to disclose or suggest the inventions defined by Applicant’s claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

Applicant is confused by the Examiner’s rejection. The Examiner rejected claims 35-37 over Lynk in view of MPEP 2144.03. In discussing his rejection, however, the Examiner relied on Burns (U.S. Pat. App. No. 2002/0071545) in addition to Lynk and MPEP 2144.03. Assuming that the Examiner meant to reject claims 35-37 under § 103 as being unpatentable over Lynk in view of Burns in further view of MPEP 2144.03, substantially the same arguments described above with respect to claims 1-34 are applicable to claims 35-37.

Therefore, for at least these reasons set forth above with respect to claims 1-34, the Examiner has failed to establish a prima facie case for non-patentability of Applicant's claims 35-37 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 17-0026. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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